

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
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Attorneys for John Garamendi,
California Insurance Commissioner

**BEFORE THE COMMISSIONER OF THE DEPARTMENT OF INSURANCE
OF THE STATE OF CALIFORNIA, LOS ANGELES**

In the Matter of the Licenses and Licensing
Rights of

AMEX ASSURANCE COMPANY,
Respondent.

File No. UPA 0504-7580

OAH No. _____

ORDER TO SHOW CAUSE
(Ins. Code Sections 790.03 and 790.05);

AMENDED STATEMENT OF
CHARGES/ACCUSATION
(Ins. Code Sections 790.03 and 790.05);

NOTICE OF MONETARY PENALTY
(Ins. Code Sections 790.03, 790.05 and
790.035).

and

ORDER TO SHOW CAUSE
(Ins. Code Section 790.06)

Date: On a date to be set.

Time: 9:00 a.m.

Place: Office of Administrative Hearings
320 West Fourth Street Suite 630
Los Angeles CA 90013

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1 general, if these and other operating procedures of the Company conform with the contractual
2 obligations in the policy forms, to provisions of the California Insurance Code (CIC), the
3 California Code of Regulations (CCR), the California Vehicle Code (CVC) and case law¹.

4 4. To accomplish the foregoing, the re-examination included:

5 a. A review of the guidelines, procedures, training plans and forms adopted by the
6 Company for use in California including any documentation maintained by the Company in
7 support of positions or interpretations of fair claims settlement practices.

8 b. A review of the application of such guidelines, procedures, and forms, by means of
9 a re-examination of claims files and related records.

10 c. A review of consumer complaints received by the California Department of
11 Insurance (CDI) in the most recent year prior to the start of the re-examination.

12 5. The re- examination was primarily conducted at respondent's claims office in DePere,
13 Wisconsin. The examiners reviewed 261 claim files. The examiners cited 135 violations of the
14 Unfair Practices Act, Article 6.5, CIC Section 790.03 and the Unfair or Deceptive Acts or
15 Practices in the Business of Insurance, Title 10, Subchapter 7.5, Article 1, Fair Claims Settlement
16 Practices Regulations. Additionally, the examiners cited 21 other violations which do not fall
17 within the scope of these regulations.

18 6. Respondent, from May 1, 2002 through April 30, 2003 violated the provisions of CIC
19 Sections 790.03(h) and the Fair Claims Settlement Practices found in CCR, Title 10, Chapter 5,
20 Subchapter 7.5, Sections 2695.3 through 2695.8 (adopted pursuant to CIC Section 790.034) either
21 knowingly or with such frequency as to indicate a general business practice.

22 7. As above, Respondent, from May 1, 2002 through April 30, 2003 violated the following
23 provisions of the California Insurance Code and the California Code of Regulations, Title 10,
24 Chapter 5, Subchapter 7.5; said violations representing unfair or deceptive acts,² as follows:

25 a. On 73 occasions, in violation of CCR §2695.8(b)(1) the Respondent failed to explain in
26 writing for the claimant the basis of the fully itemized cost of the comparable automobile or the
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28 ¹ A copy of the public report of examination is attached as Exhibit 1.

² Attached as Exhibit 2 are the Tables of Specific Findings with the name of the insured redacted for privacy reasons.

- 1 Company failed to include, in the settlement, all applicable taxes, license fees and other fees
2 incident to transfer of evidence of ownership of the comparable automobile.
- 3 b. On 30 occasions, in violation of CCR §2695.8(f), the Respondent failed to supply the
4 claimant with a copy of the estimate upon which the settlement is based.
- 5 c. On 6 occasions, in violation of CCR §2695.7(g), the Respondent attempted to settle a
6 claim by making a settlement offer that was unreasonably low.
- 7 d. On 4 occasions, in violation of CCR §2695.7(b)(3), the Respondent failed to include a
8 statement in its claim denial that, if the claimant believes the claim has been wrongfully denied or
9 rejected, he or she may have the matter reviewed by the California Department of Insurance.
- 10 e. On 4 occasions, in violation of CCR §2695.7(c)(1), the Respondent failed to provide
11 written notice of the need for additional time every 30 calendar days.
- 12 f. On 4 occasions, in violation of CCR §2695.8(b)(1)(C), the Respondent failed to document
13 the determination of value. Any deductions from value, including deduction for salvage, must be
14 discernible, measurable, itemized, and specified as well as be appropriate in dollar amount.
- 15 g. On 3 occasions, in violation of CCR §2695.7(b), the Respondent failed, upon receiving
16 proof of claim, to accept or deny the claim within 40 calendar days.
- 17 h. On 2 occasions, in violation of CIC §790.03(h)(3), the Respondent failed to adopt and
18 implement reasonable standards for the prompt investigation and processing of claims arising
19 under its insurance policies.
- 20 i. On 2 occasions, in violation of CCR §2695.7(b)(1), the Respondent failed to provide
21 written basis for the denial of the claim.
- 22 j. On 2 occasions, in violation of CCR §2695.8(k), the Respondent failed to document the
23 basis of betterment, depreciation, or salvage. The basis for any adjustment shall be fully explained
24 to the claimant in writing.
- 25 k. On 1 occasion, in violation of CCR §2695.5(b), the Respondent failed to respond to
26 communications within 15 calendar days.
- 27 l. On 1 occasion, in violation of §2695.7(f), the Respondent failed to provide written notice
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1 of any statute of limitation or other time period requirement not less than 60 days prior to the
2 expiration date.

3 8. As a result of the Examination, the Commissioner, in his official capacity, now alleges
4 that Respondent has violated, in addition to the provisions of the Fair Claims Settlement Practices
5 Regulations, the following and that these violations constitute acts or practices that are unfair or
6 deceptive:

7 a. On 13 occasions, in violation of CCR §2632.13(e) (2), the Respondent failed to properly
8 advise the insured that the driver of the insured vehicle was principally at-fault for an accident.
9 Specifically, at fault letters were not sent by the Company.

10 b. On 4 occasions, in violation of California Vehicle Code §11515.2(b), the Respondent
11 failed to notify the Department of Motor Vehicles that the owner of a total loss non-repairable
12 vehicle retained possession of the vehicle.

13 c. On 2 occasions, in violation of California Vehicle Code §11515.2(b), the Respondent
14 failed to notify the insured or owner of his or her responsibility to comply with CVC §11515.2(b).

15 d. On 2 occasions, in violation of California Vehicle Code §11515(a), the Respondent failed
16 to notify the Department of Motor Vehicles of a total loss settlement on a salvage vehicle within
17 10 days from the settlement.

18 **PRAYER**

19 WHEREFORE, Petitioner prays for judgment against Respondent as follows:

20 1. An Order to Cease and Desist from engaging in such unfair acts or
21 practices in violation of CIC 790.03 and the regulations promulgated pursuant to CIC
22 Section 790.10 as set forth above in paragraph seven;

23 2. Pursuant to CIC Section 790.035, for unfair or deceptive acts in violation of
24 Section 790.03 and CCR, Title 10, Chapter 5, Subchapter 7.5, Sections 2695.1 through 2695.17
25 (adopted pursuant to CIC Section 790.034), as set forth above in paragraph seven, a penalty in an
26 amount to be fixed by the Commissioner not to exceed ten thousand dollars (\$10,000.00) for each
27 unfair or deceptive act or practice found to be willful; and a penalty in an amount to be fixed by
28 the Commissioner not to exceed five thousand dollars (\$5,000.00) for each unfair or deceptive act

1 or practice found not to be willful.

2 3. Pursuant to CIC Section 790.06, that a declaration be made that the acts
3 identified in paragraph eight are unfair or deceptive pursuant to Article 6.5 of the California
4 Insurance Code.

5 Dated: January 27, 2006

JOHN GARAMENDI
Insurance Commissioner

7 -s-

8 By _____
Michael Tancredi
Staff Counsel